

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRAN DINH TRUONG, individually and on behalf of ALPHONSE HOTEL CORP. d/b/a HOTEL CARTER,

Plaintiff,

- against -

NEW YORK HOTEL & MOTEL TRADES COUNCIL, AFL-CIO, and THE OFFICE OF THE IMPARTIAL CHAIRMAN and PETER WARD,

Defendants.

Case No. 1:07-Civ-11383 (RJH)

**REPLY DECLARATION OF
CHERRIL DUNN IN SUPPORT
OF DEFENDANT OIC's MOTIONS
FOR JUDGMENT ON THE
PLEADINGS PURSUANT TO FED.
R. CIV. P. 12(C) AND FOR
SANCTIONS PURSUANT TO
FED. R. CIV. P. 11**

-----X

CHERRIL DUNN, pursuant to 28 U.S.C. §1746(2), under penalty of perjury,
hereby declares as follows:

1. I am the Assistant to the IC Administrator of defendant The Office of the Impartial Chariman ("OIC"). As such, I am the custodian of the business records of OIC attached hereto and have personal knowledge of the matters stated herein. I submit this Reply Declaration in support of OIC's motions for Judgment on the Pleadings pursuant to Fed. R. Civ. P. 12(c) and for an order imposing sanctions upon plaintiffs and their counsel pursuant to Fed. R. Civ. P. 11.

2. OIC is a standing organization of labor arbitrators empanelled to hear disputes arising out of the Industry Wide Agreement. It is a regularly conducted business activity of OIC to administer the arbitrations by its arbitrators of such disputes.

3. In the course of that regularly conducted business activity, it is the regular practice of OIC to make and keep case files containing certain documents reflecting the initiation and processing of each arbitration OIC administers, including, without limitation: (1) letters communicating to the OIC management's requests for hearings and/or formal grievances against the New York Hotel and Motel Trades Council, AFL-CIO (the "Union"), which initiate and are placed in a new case file at or near the time they are received; (2) OIC generated hearing notices (including, for notices by facsimile, fax transmission sheets), which notify the parties to such grievances or requests for hearings of the time, date, place, and subject of the hearing scheduled by OIC to address the matter, and which are placed in the case file at or near the time they are sent to the parties; and (3) OIC Appearance Sheets, which reflect, among other things, the Union Reps and Witness and Employer Reps and Witnesses who attended such hearings, the case number, the date and time of the hearing, and "Arbitrator Notes" (reflecting notes made by the presiding arbitrator about the hearing), and which are made and placed in the case file at or near the time of the hearing.

4. Attached hereto as Exhibit A are true copies of documents from OIC's case file of case number M07-463, including:

- Letter from Tran Truong, dated October 25, 2007, on the letterhead of Hotel Carter, requesting "an emergency hearing regarding the Union official Rolando Ruis who comes today to the hotel threatening, harassing, cursing, fighting and yelling to hotel management employees and officers...." This was the initiating document for OIC case #M07-463, and OIC handwrote on the document, among other things, (a) that case number and (b) "E 10/16/07," reflecting that that case was entered into OIC's system on October 16, 2007. In accordance with OIC's regular practice, this

letter was annotated by OIC and placed in the case file for case #M07-463 at or near the time it was received, that is, on or before October 16, 2007.

- OIC's Hearing Notice for Case #M07-463, dated October 18, 2007, addressed to Tran D. Truong (as Owner/GM of the Carter Hotel), Mr. Peter Ward, and some 15 "cc's", including, without limitation, "Calabro & Vera, Esqs., and notifying the parties that

A hearing will be held in this office (321 West 44th Street, Suite 400, New York City) on **Monday, October 22, 2007 at 1:00 p.m.** in the matter of the request of Management concerning:

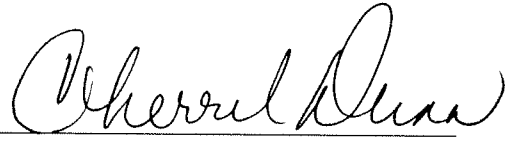
#M07-463/Emergency Hearing requested by Management re: Union's alleged maltreatment of Hotel Management personnel and officers; alleged inappropriate behavior at the Hotel by Union representative.

In order that your interests may be protected, it is essential that you be present or represented at that time.

The attached fax "Communication Result Report (OCT. 18, 2007 12:06 PM)" reflects that the Hearing Notice was successfully faxed to, among others, Tran D. Truong (Fax No.: 212-398-8541) and lawyers, Ricardo Vera, Esq. & Gregory G. Calabro, Esq. (Fax No.: 646-688-6096) at between 11:42 a.m. and 12:06 p.m. on October 18, 2007. In accordance with OIC's regular practice, this Hearing Notice (including the Communication Result Report) was created and sent to the parties on October 18, 2007, and placed in the case file for case #M07-463 at or near the time it was sent.

- OIC's Appearance Sheet for the hearing in Case #M07-463 on October 22, 2007 at 1 p.m., reflecting, among other things, (1) the attendance for the Union of Business Agent Rolando Ruiz, Attorney Joseph Farelli, and Witness Rendall

Sullivan, Tran Truong and one other Representative of Employer The Carter Hotel, as well as the Hotel's Attorney "Calabro & Associates, P.C. by G. Calabro"; (2) the identity of the presiding arbitrator, Ira Drogin; and (3) under "Arbitrator Notes," the notation "adj. on consent," reflecting that the hearing was adjourned on the consent of the parties. In accordance with OIC's regular practice, this Appearance Sheet was created by the arbitrator and placed in the case file for case # M07-463 at or near of the hearing on October 22, 2007.


Cherril Dunn

Dated: June 6, 2008

EXHIBIT A



HOTEL

*Carter**"In the Theater District"*

43RD STREET WEST OF BROADWAY • NEW YORK, N. Y. 10036

700 ROOMS WITH BATH
21" TELEVISION—RADIO
AIR CONDITIONED

October 15, 2007

To: Office of the Impartial Chairperson
321 West 44th Street, Suite 400
New York, NY 10036
Fax # 212-541-9356

E 10/16/07

Re: Emergency Hearing regarding Union Officer Harassments

Dear Impartial Chairman,

We would like to request an emergency hearing regarding the Union official Rolando Ruiz who comes today to the hotel, threatening, harassing, cursing, fighting and yelling to hotel management employees and officers. This act is very unprofessional and discriminatory considering that they are doing this in the lobby up to the hotel's office. We have been a victim of this maltreatment by the Union and we want to request for emergency hearing.

Sincerely,

Tran Truong
President

MO7-463

#063

10/22 @

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OFFICE OF THE IMPARTIAL CHAIRPERSON

321 WEST 44TH STREET, SUITE 400

NEW YORK, NY 10036

TEL: (212) 541-7212 FAX: (212) 541-9356

HOTEL ASSOCIATION OF NEW YORK CITY, INC.

NEW YORK HOTEL & MOTEL TRADES COUNCIL

10/18/2007

Tran D. Truong
Owner/GM
The Carter Hotel
250 West 43rd Street
New York, NY 10036-3966

Mr. Peter Ward
New York Hotel & Motel Trades Council
707 Eighth Avenue
New York, NY 10036

Sent Via Facsimile to All Parties

A hearing will be held in this office (321 West 44th Street, Suite 400, New York City) on **Monday, October 22, 2007 at 1:00 PM** in the matter of the request of Management concerning:

#M07-463/Emergency Hearing requested by Management re: Union's alleged maltreatment of Hotel Management personnel and officers; alleged inappropriate behavior at the Hotel by Union representative.

In order that your interests may be protected, it is essential that you be present or represented at that time.

cc: David Rothfeld, Esq.
Stephen Steinbrecher, Esq.
Niki Franzitta, Esq.
Christian White, Esq.
Richard Amato
Vincent Pitta, Esq.
Barry Saltzman, Esq.
Jane Lauer Barker, Esq.
Joseph Farelli, Esq.
Michael D'Angelo, Esq.
Brian Lysell
Madelyn Rivera
Susan Gempler
Rolando Ruiz
Calabro & Vera, Esqs.

* * * COMMUNICATION RESULT REPORT (OCT. 18. 2007 12:06PM) * * *

TTI

TRANSMITTED/STORED OCT. 18. 2007 11:42AM
FILE MODE OPTION

FILE MODE	OPTION	ADDRESS	RESULT	PAGE
0272	MEMORY TX	912123988541	OK	2/2
		916466886096	OK	2/2
		912122621420	OK	2/2
		(G03) 912129573418	OK	2/2
		(G03) 912126523891	OK	2/2
		(G03) 912127540243	OK	2/2
		(G03) 912129774550	OK	2/2
		(G03) 912125419799	OK	2/2

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-3) NO ANSWER

E-2) BUSY
E-4) NO FACSIMILE CONNECTION

OFFICE OF THE IMPARTIAL CHAIRPERSON
321 West 44th Street, Suite 400
New York, NY 10036
TEL: (212) 541-7212 FAX: (212) 541-9356

**NOTICE OF EMERGENCY HEARING
FAX COVER SHEET**

TO: Tran D. Truong, Owner/GM
Erwin Lumlinglass
Carter Hotel
Fax No.: 398-8541

Ricardo Vera, Esq. & Gregory G. Calabro, Esq.
Fax No.: 646-688-6096

KANE KESSLER PC - Attn: Doris Guntner, LA
Fax No.: 541-9799

PITTA & DREIER LLP/Attn: Vincent Pitta, Esq.; Joseph
Farelli, Esq.; Jane Lauer Barker, Esq.; Susan Gempler;
Michael D'Angelo, Esq.
Fax No.: 652-3891

Madelyn & Talia 977-4550
Richard Amato 754-0243
Brian Lysell 957-3418
Rolando Ruiz 957-3418
Carmen Vuotto 262-1420

FROM: Lori Pobiner IC Administrator

DATE: October 18, 2007

RE: HTC Case #M07-463/CONTRACTUAL

No. of pages (Including cover sheet): 2

APPEARANCE SHEET

EMPLOYER: The Carter Hotel

Business Agent: Rolando Ruiz

2007-79

☐ Perempt V Union
☐ Perempt V Mgmt
☐ Perempt V Both

Case #: M07-463

Arbitrator: Ira Drogin

Date: 10/22/2007 Time: 1:00PM

Day of Week: ☒ Mon ☐ Wed ☐ Fri
☐ Tues ☐ Thurs

Bill: \$675.00

Status Posted: ☒ Yes ☐ No

Invoice #: 1454

Updater: ☒ LP ☐ CD

UNION REPS AND WITNESSES

EMPLOYER REPS AND WITNESSES

Business Agent:

Rolando Ruiz

General Manager:

HR Director:

Other:

Attorney for Union:

Joseph Perelli

Attorney for Employer:

Catherine P. ...

Witnesses:

Rebecca Sullivan

Witnesses:

ARBITRATOR NOTES

adj. on consent

ADMINISTRATOR NOTES

2/21 on 2/28
 @ 9-30